IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1133 OF 2006

Shri Surendra Maniklal Mutha, .. Applicant
Vs
1.Shri Anil Narhar Kulkarni & Anr Respondents.

Mr A.P.Kulkarni, for the applicant.
Mr Milind Deshmukh, for respondent no.1.
Mr P.A.Pol, APP for the respondent-State.

CORAM : D.B.BHOSALE, J.

DATED : 19th JUNE, 2006

P.C.:

1. Heard the learned counsel for the parties.

2. By this application, the applicant has challenged the order dated 13.12.2005 passed below Exhibit-50, by which the application filed by the respondent-accused has been allowed partly and the proceedings in Criminal Case No.1978 of 2003 have been stayed till the final report under section 173 of Cr.P.C is received in the Complaint No.5 of 2004. The prayers in the application-Exhibit-50 were two-fold. Firstly, Criminal Case No.1978 of 2003 and private Complaint No.5 of 2004 filed by the applicant be heard together and, secondly, stay to be granted for stay to the proceedings in Case No.1978 of 2003 until the report under section 173 of Cr.P.C filed in the Case No.5 of 2004. Mr.Deshmukh, learned counsel for respondent-accused, submitted that the investigation

under section 156 (3), as directed by the learned Magistrate and the report under section 173 of Cr.P.C will have a bearing on the case under section 138 of the Negotiable Instruments Act and, therefore, the case under section 138 cannot proceed. I find it difficult to accept the submission of Mr Deshmukh. It may be true that both these cases filed by the complainant arise from the same set of facts. However, the Complaint No.5 of 2004 is for the offences punishable under sections 420,406,462,463,465 of IPC, whereas the case no.1978/2003 is under section 138 of the Negotiable Instruments Act. The record reveals that in the case no.5 of 2004 the order under section 156(3) of Cr.P.C was passed in February,2004 and till this date report under section 173 of Cr.P.C has not been filed. Moreover, despite specific directions by the impugned order dated 13.12.2005 the respondent-accused has chosen not to file the application for clubbing the aforesaid matters for the reasons best known to him. In the circumstances, the proceedings under section 138 of the Negotiable Instruments Act need not be stayed. Accordingly, the stay granted by the learned Magistrate is vacated and he is directed to proceed with the hearing of the case under section 138 of the Negotiable Instruments Act without awaiting a report under section 173 of Cr.P.C.

The Criminal Application is accordingly disposed of.

(D.B.BHOSALE,J.)